FOR MYSORE STATE

Development (1950) Department

MS SERIES

G.O No 3869 2

Dated 29-9-50

[Despatch Abstract.]

G.O.No.3869/29-9-50 Acts - Madras Shops and Establishment Act, 1946 Penalties for offences - Second and Subsequent offences - Clarification of.

GOVERNMENT OF MADRAS
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Development Department.

Acts- Madras Shops and Establishments. Act, 1947- Penalties for offences-Second and Subsequent offences- Clarification of.

DEVELOPMENT DEPARTMENT.

G.O.Ms.No: 3869

Dated 29th September 1950
Read:-

From the Commissioner of Labour No.F.1.28410/50 dated 29-9-50

ORDER:

Section 45(1) of the Madras Shops and Establishments Act prescribes the same maximum penalty in respect of a contravention by an employer of any of the provisions of the sections specified therein. In view of this circumstance. it is not unreasonable to infer that the Legislature intended that the gravity of the contravention is the same in respect of each of the sections specified in section 45(1). In this view, the words"second or subsequent offence" in section 45(1) are wide enough to include a case where the first offence was under one of the sections specified in section 45(1) and the second or subsequent offence is under a different section specified therein. Further, the words used are " a second or subsequent offence" and not " the second or subsequent offence" or "the same offence". If any of the latter expressions had been used, it can reasonably be contended that the Legislature had in mind the imposition of enhanced penalty only when the employer commits the same offence as on the earlier occasion.

2. The three points raised by the Commissioner of Labour in the letter cited are clarified below:-

(i) A contravention of section 11(1) in the case stated would constitute a second or subsequent offence:

(ii) Section 8 is not one of the sections mentioned in section45(1) Specific provision has been made for the imposition of enhanced penalty in the case of a second or subsequent offence under section 8-vide section 45(2). Under section 45(2). the Commission of the same offence alone would constitute the second or subsequent offence. In the case stated by

the Commissioner the second contravention i.e. that under section 8, would constitute a first offence for the purpose of section 45(2).

(iii) Section 46 is not one of the sections mentioned in section45(1) Consequently, the case mentioned by the Commissioner cannot be brought within the scope of that section. The second contravention i.e. that under section 7(1) would therefore constitute a first offence for the purposes of section 45(i).

3. The Commission is also informed that, while the correct interpretation of section 45(1) is an arguable one, he may act on the basis of the views expressed in para 2 above, until the High Court decides to the contrary. If any Magistrate decides to the contrary, the Commissioner is requested to report the matter immediately to Government, so as to enable them to decide whether the correctness of the Magistrate's decision should be tested or not in the High Court.

(By order of His Excellency the Governor)

P.S. Viswanatha Ayyar.
Secretary to Government.

To

The Commissioner of Labour,

The Stock File

-True copy-

Superintendent.

RR.1-9.